



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/602,586 | 06/24/2003 | Kevin J. Kwitkowski | 038712/264882 | 1642 |

826 7590 03/09/2006

ALSTON & BIRD LLP
BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET, SUITE 4000
CHARLOTTE, NC 28280-4000

EXAMINER

SALVATORE, LYNDIA

ART UNIT PAPER NUMBER

1771

DATE MAILED: 03/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/602,586

Applicant(s)

KWITKOWSKI ET AL.

Examiner

Lynda M. Salvatore

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 9-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's 37 CFR § 1.131 Declaration and accompanying remarks have been fully considered and entered. Applicant's Declaration establishes an invention date prior to the November 30, 2001 invention date of the secondary reference of Willis et al., relied upon in the obviousness rejection set forth in section 8 of the last Office Action. As such, this rejection is hereby withdrawn. Applicant's argument with respect to the primary reference of Childs et al., reference, however, is not found persuasive of patentability and upon further consideration a new ground of rejection is set forth herein below.

Election/Restrictions

2. Applicant's election of claims 1-8 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 9-12 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected process there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-5, 7 and 8 are rejected under 35 U.S.C. 103(a) as being obvious over Childs et al., US 5,883, 069 in view of Knee, US 3,402,227.

The patent issued to Childs et al., teach a spunbond non-woven fabric substrate comprising polyester fibers having a denier from 5 to about 8, a basis weight from about .53 to

Art Unit: 1771

about .59 oz/yd², a thickness ranging from .16 mm to about .23 mm, a tear strength from 4 to about 7 lbs/in² in the cross direction and from about 3.1 to about 6 lbs/in² in the machine direction (Abstract and Column 2, 13-25). Said spun-bond non-woven fabric is suitable for use as dryer activated fabric softening articles (Abstract).

Childs et al., does not specifically teach continuous filaments made from the claimed polyester homopolymer and polyester copolymer binder filaments, however, the patent issued to Knee teaches a continuous filament non-woven web comprising homopolymer matrix polyethylene terephthalate filaments and 15 wt. % of lower melting polyester binder filaments made from a copolymer of polyethylene isophthalate (column 8, 23-65).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the spun-bonded non-woven fabric substrate taught by Childs et al., with the homopolymer matrix polyethylene terephthalate filaments and copolymer polyester binder filaments as taught by Knee. Motivation to select the specific claimed combination of filament materials is found in the desire to use known materials in the art of forming non-woven webs.

With regard to Applicant's argument that the basis weight range taught by Childs et al., is significantly higher than that of the claimed non-woven, it is the position of the Examiner that a basis weight from about .53 to about .59 oz/yd² is not significantly higher than the claimed .50 oz/yd². In other words, the term about is considered a flexible term and can include values both above and below lower end point of .53 oz/yd². To that end, it is the position of the Examiner that absent unexpected results to evidence otherwise, a few tenths in either direction would not

Art Unit: 1771

negatively impact the functionality of the non-woven fabric substrate or be considered a patentably distinguishable feature over the prior art at this time.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being obvious over Childs et al., US 5,883, 069 in view of Knee, US 3,402,227 as applied to claim 1 above and further in view of Largman et al., US 5,057,368

The combination of prior art does not teach tri-lobal filaments, however, such cross-sectional filament shapes are known in the art and are known to increase bulk, are high loft, inherently possess a greater surface area and have good wicking ability. For example, the patent issued to Largman et al., teach tri-lobal filaments (figure 1), which exhibit high loft and good wicking ability (column 2, 30-40 and column 3, 43-55). Said filaments are used in the formation of filters, cloths and wipes (column 10, 17-40).

Therefore, motivated by the desirable properties associated with tri-lobal cross-sectional filament shapes, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the filaments in the non-woven fabric of Childs et al., in view of Knee with a tri-lobal cross sectional shape as taught by Largman et al.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M. Salvatore whose telephone number is 571-272-1482. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1771

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 6, 2006

ls

A handwritten signature in cursive script, appearing to read "Linda Salva".